

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CONSTANCE K. HANNEY and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Utah

*Docket No. 96-2260; Submitted on the Record;  
Issued July 27, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing a recurrence of disability after September 18, 1992 causally related to her March 25, 1980 employment injury; and (2) whether the Office of Workers' Compensation Programs' denial of appellant's request for reconsideration pursuant to section 8128(a) of the Federal Employees' Compensation Act and refusal to reopen the record constituted an abuse of discretion.

On March 25, 1980 appellant, then a 44-year-old air conditioner electrician, filed a traumatic injury claim when she sustained injuries due to a fall on the ice. The Office accepted appellant's claim for contusions to the right wrist and hand, contusions to the left side of her face and chin and a contusion to her left thigh. On September 18, 1992 appellant filed a claim for recurrence of disability, alleging that she had twisted her back at the time of the original March 25, 1980 incident and had continuous back and leg pain after that incident. In a decision dated June 6, 1995, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the claimed conditions and the accepted employment injury. By decision dated March 25, 1996, an Office hearing representative affirmed the Office's June 6, 1995 decision. In a decision dated June 11, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitive and was not sufficient to warrant merit review.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not met her burden of proof in establishing a recurrence of disability after September 18, 1992.<sup>1</sup>

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<sup>1</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on July 19, 1996, the only decisions before the Board are the Office's March 25 and June 11, 1996 decisions. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>4</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>6</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>7</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>8</sup>

In the present case, appellant has not submitted probative medical evidence which establishes that her claimed leg and back conditions are causally related to her March 25, 1980 employment injury. Appellant submitted numerous medical reports from Dr. David Smith, a neurologist to whom she was referred by Dr. Dale J. Bennett, her treating chiropractor. Dr. Bennett indicated that he began treating appellant on July 31, 1991 for complaints of frequent leg and foot pain. He diagnosed acute, moderate to severe accumulative constant pain lumbar syndrome, lumbalgia with radiculitis due to cervical, thoracic and lumbar subluxations complicated by disc degeneration discopathy. In reports dated September 14 and 22, 1992, Dr. Smith provided a history of right hip and leg pain worsening over the past few months, a positive electromyography showing changes in the L5 nerve root distribution and absent right Achilles reflex related to a suspected synovial cyst as seen on magnetic resonance imaging (MRI) scan of September 17, 1992. The only trauma noted in the September 14, 1992 report was a blow to the lateral aspect of the knee approximately three years prior to the report. In response to the Office's request for additional information on April 12, 1995 including all

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<sup>2</sup> *John E. Blount*, 30 ECAB 1374 (1979).

<sup>3</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>4</sup> *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>5</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>6</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>7</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>8</sup> *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

medical records and treatment for the claimed work-related back condition and a medical report supporting causal relationship, appellant submitted an August 15, 1994 report by Dr. Smith who indicated that appellant suffered from “significant muscle spasms which [were] contributing to and may be the sole cause of her pain.” In an August 31, 1994 follow-up report, he found bilateral lumbar pain and right gluteus maximus pain. In his January 30, 1995 report, Dr. Smith indicated that appellant provided a history of low back pain after a fall at work on March 25, 1980. He indicated that the low back pain was likely related to bulging of herniated disc at the L4-5 level and this “likely relates” to the injury at the time of the fall. In a June 28, 1995 report, Dr. Smith provided a history of the March 25, 1980 employment incident and indicated that appellant sustained contusions to her face, arm, hip and back. He reported that appellant had essentially continuous pain in her lower back after the fall and suffered from insomnia as a result of the back and leg pains over the course of the next 10 years. Dr. Smith concluded that appellant’s back problems appeared to be the result of the March 25, 1980 fall. The report by Dr. Bennett does not address the cause of appellant’s claimed conditions and therefore is not sufficient to meet appellant’s burden of proof. Similarly, the reports by Dr. Smith<sup>2</sup> from 1992 to 1994 do not implicate appellant’s March 1980 employment injury as the cause of her claimed conditions. It is not until the January 1995 report, that Dr. Smith mentions that appellant’s back condition is “likely” the result of her March 1980 employment injury, however, this finding is not conclusive and therefore is not sufficient to establish a causal nexus between the back condition and the accepted employment injuries. While the June 1995 report by Dr. Smith is more definite, the physician does not provide the basis for his conclusion that appellant’s back condition was due to her March 1980 employment injuries. A clear explanation for the basis for Dr. Smith’s opinion is necessary in this case in which he treated appellant for over two years without mentioning the injury of March 1980 and found other causes for appellant’s condition. Moreover, appellant has not presented any evidence to substantiate her claim that she sustained a back injury when she fell on March 25, 1980. Appellant did not indicate that her back was injured on the claim form; there is no medical evidence of a back injury during the 11-year period before she sought treatment by Dr. Bennett; and no type of back condition was accepted by the Office in this case. Appellant has not met her burden of proof in establishing a recurrence of disability or that her claimed condition is causally related to her accepted employment injuries.

The Board further finds that the Office properly denied appellant’s request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>9</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

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<sup>9</sup> 20 C.F.R. § 10.138(b)(2).

and does not constitute a basis for reopening a case.<sup>10</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup>

With her request for reconsideration appellant resubmitted substantially all of the medical evidence of record that had previously been reviewed and addressed by the Office in denying her claim for recurrence of disability. Inasmuch as this evidence is duplicative, it is not sufficient to warrant reopening the case for merit review. Appellant also submitted a medical report dated May 16, 1996 by Dr. Smith in which he essentially reiterates his findings and conclusions from his June 1995 report without elaborating on the basis for his conclusion that appellant's back condition was a direct result of her March 1980 fall. This report is cumulative in nature and therefore does not constitute a basis for reopening the case. The Office properly denied appellant's request for reconsideration and did not abuse its discretion in not reopening the case for merit review.

The decisions of the Office of Workers' Compensation Programs dated June 11 and March 25, 1996 are hereby affirmed.

Dated, Washington, D.C.  
July 27, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>11</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).